

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DENNIS C. DALEY, : 4:CV-04-2213
Plaintiff : (Judge McClure)
v. :
FIRETREE, LTD., and KENN HALL, :
Defendants :

O R D E R

December 14, 2005

BACKGROUND:

Plaintiff, Dennis C. Daley, initiated this action by filing a complaint on October 7, 2004 against defendants Firetree, LTD. and Kenn Hall. In his three-count complaint plaintiff alleges copyright infringement under the federal Copyright Act (Count I), unfair competition under the common law (Count II) and tortious interference with advantageous business relations (Count III). Jurisdiction of this court is based upon 28 U.S.C. § 1338(a) as to Count I, § 1338(b) as to Count II and § 1367(a) as to Count III.

Before the court is a motion for partial judgment on the pleadings filed by defendants on October 25, 2005. A brief in support of the motion was filed the

same day.

No brief has been filed in opposition to the motion. Under LR 7.6 of the Local Rules of the United States District Court for the Middle District of Pennsylvania, any respondent who fails to file a responsive brief in a timely fashion shall be deemed not to oppose the motion.

In this instance defendants failed to file a certification as required by LR 7.1 that he or she has sought concurrence in the motion from each party and that it has been either given or denied. Furthermore, defendants also did not comply with the provision of LR 7.1 which requires every motion to be accompanied by a form of order which, if approved by the court, would grant the relief sought in the motion.

As plaintiff is represented by counsel, the court can only assume that counsel has not been able to muster arguments against the motion, whether or not he may have earlier refused to concur in the motion. The court will therefore grant the motion as unopposed, and without a merits analysis. If for some reason plaintiff finds this resolution of the motion unacceptable, he will need to file a motion for reconsideration within ten (10) days. See LR 7.10.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Defendants' motion for partial judgment on the pleadings (Rec. Doc. No. 26, filed October 25, 2005) is granted as unopposed.
2. Counts II and III of plaintiff's complaint are dismissed with prejudice.
3. Plaintiff's claim for statutory damages under the Copyright Act is limited to a single award for each work proved to have been infringed regardless of the number of copies of the work made or number of infringements established.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge